SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 79.

NATIONAL LABOR RELATIONS BOARD, - Petitioner,

COCA-COLA BOTTLING CO. OF LOUISVILLE, INC., - - - - - Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN REPLY TO THE BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*.

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INTRODUCTION.

This brief is submitted by Respondent in reply to the brief *Amicus Curiae* submitted by the American Federation of Labor and Congress of Industrial Organizations (C.I.O.). Its purpose is to clear up certain misconceptions which Respondent believes have been introduced by the C.I.O. brief.

ARGUMENT.

I. The C.I.O. Erroneously Attempts to Inject an Issue as to the Appropriateness of This Court's Decision in the *Highland Park* Case Into This Case.

The C.I.O. repeatedly refers to this Court's decision in *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 341 U. S. 322 (1951), and to what it considers to be the evil consequences of the ruling of this Court in that case (*Amicus* brief, pp. 2, 3, 14, 15, 17-19). The C.I.O. brief seems, therefore, to be an attempt to inject an additional issue into this case namely, the validity and appropriateness of this Court's decision in that earlier case. But this is an issue which does not arise between the parties. Both the Board and the Respondent rely on, and assume the validity of, the decision in the *Highland Park* case.[1] Hence, Respondent submits that, to the extent that the C.I.O.'s brief is devoted to discussing the merits of the *Highland Park* decision, that brief must be recognized to have no bearing on this case.

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[1]The Board urges that this case presents a question expressly reserved in the *Highland Park* case, namely, whether an employer may challenge the Board's determination of compliance by a union with Section 9(h) in respect to a question of the fact of compliance (Petitioner's brief, pp. 45-48). Respondent on the other hand contends that this case is indistinguishable from the *Highland Park* decision (Respondent's brief, pp. 28-29). It asserts that the question presented here, just as in the *Highland Park* case, is whether a party to a labor case proceeding may challenge the Board's determination of union compliance on a point of law, namely, the construction of certain terms which appear in Section 9(h). The Respondent also views the *Highland Park* decision as supporting its contention that the Board's "constitutional" test is too narrow and mechanical and is contrary to the meaning of the term "officers" intended by Congress (Respondent's brief, pp. 49, 50).

The purpose of the C.I.O. in attempting to revive the settled questions of the *Highland Park* decision may be to weaken the authority of the *Highland Park* decision as it bears on this case. But the great propositions of the *Highland Park* case—which are (1) that a party to an unfair labor practice proceeding has the right to challenge the Board's determination of the compliance of a union with Section 9(h) of the National Labor Relations Act on a point of law, namely, the construction of the terms appearing in that section applied by the Board in determining compliance, and (2) that Congress meant by enacting Section 9(h) to "wholly eradicate and bar from leadership at each and every level, adherents to the Communist Party and believers in the unconstitutional overthrow of our Government" (341 U. S. at 325)[2]—stand unimpaired. There have been no subsequent judicial decisions which have in any way cast doubt on the reasoning and results reached in that decision, and indeed the case has received the implicit approval of Congress. Subsequent to the decision in the *Highland Park* case, Congress enacted the present Section 18 of the National Labor Relations Act (65 Stat. 601, 29 U. S. C., Section 168). This section provides:

> "No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of Section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organ-

[2] See Respondent's brief, pp. 26-29, 49, 50.

izations to have complied with the requirements of Section 9(f), (g), or (h) of the aforesaid Act prior to December 22, 1949. . . ."

This provision was designed to validate the Board's certifications of C.I.O. affiliated unions prior to December 22, 1949, the date on which the C.I.O. had come into compliance with Section 9(h) (see *National Labor Relations Board* v. *Clark Shoe Co.*, 189 F. 2d 731, 732 (1st Cir. 1951)), which necessarily had been voided by the *Highland Park* decision that Section 9(h) applied to the C.I.O. and that the failure of the C.I.O. offices to file non-Communist affidavits barred the Board from hearing unfair labor practice charges and representation issues at the instance of C.I.O. affiliated unions.[3] Congress, therefore, sought only to remedy certain retroactive results which stemmed from the over-turning of the Board's ruling that Section 9(h) did not apply to the C.I.O. It did not, when considering legislation dealing with the *Highland Park* decision, in any way seek to modify the principles adopted by the Court in that decision. Therefore, it must be assumed that Congress whole-heartedly approved of the doctrines enunciated in the *Highland Park* case. Hence, Respondent submits that the validity and authority of the *Highland Park* decision, as it bears on this case, is beyond doubt.

[3]Section 18 applies only to labor cases involving questions of employee representation. Congress did not deem it advisable to reinstate unfair labor practice complaints which had necessarily been invalidated by the *Highland Park* decision. (See *Amicus* brief, p. 18).

II. The C.I.O. Wrongly Implies That the Respondent Could not, If Given the Opportunity, Establish That Regional Director Taylor Exercises Wide Power and Influence Over the C.I.O. Unions in Kentucky.

The C.I.O.'s brief explains briefly the structure of the C.I.O. and the relations of the local unions and the international organizations to the federation (*Amicus* brief, pp. 4-9). This brief, however, throws little light on the role of the C.I.O. regional director, in the affairs of the C.I.O. itself, of the internationals, or of the locals, except that the C.I.O. explains that the regional directors have at no time had any authority or duties with respect to international unions affiliated with the C.I.O. or their local unions including the charging union in this case (*Amicus* brief, p. 8).

Nevertheless, the article from *The C.I.O. News*, October 24, 1949, page 7, from which Respondent has quoted lengthy excerpts (Respondent's brief, pp. 56-59),[4] plainly indicates that the C.I.O. regional director works in close connection with the locals and international in his region and that in fact he exercises considerable power and influence in the affairs of these groups. That article was devoted to outlining the activities of a typical regional director, one, Delmond Garst, the current regional director for Western Missouri and Southern Illinois. In regard to Regional Director Garst's activities it is stated: "Of course, there is close work with the locals and internationals in his area." A typical part of his activities was stated

[4]Excerpts from this article appear in Marx, *American Labor Unions*, 43-45 (1950).

to be taking part in "[n]egotiations for the amalgamated local industrial union" and also, "[n]egotiations for the Woodworkers" as well as "[n]egotiations for other unions when he is requested to enter the picture—which is often." Also, Regional Director Garst was "extremely active in the drive which brought C.W.A. [Communication Workers of America] into the C.I.O.". Also, it is the responsibility of the regional director to do "everything possible to have unions in his area carry out the adopted policies of national C.I.O."[5]

It may be true, as the C.I.O. states (pp. 4-7), that the great bulk of the local unions in the C.I.O. family are not, technically speaking, affiliated directly with the federation itself, but rather are affiliated with the international union organizations which are in turn affiliated with the C.I.O. itself. Nevertheless, the federation and the locals are not strangers to one another. And, indeed, as the article from *The C.I.O. News* makes clear, the locals and the representatives of the federation itself work hand in glove with one another. And the regional directors, as the article states, are the key figures in co-ordinating the activities and in-

[5] See also Chief Judge Parker's remarks in the lower court decision in the *Highland Park* case, 184 F. 2d 98, 100 (4th Cir. 1950):

> "[I]t is perfectly clear that it is much more important to exclude communists and others plotting the overthrow of the government by force from holding office in the great national labor organizations such as the C.I.O. and the A.F.L. than to exclude them from office holding in their affiliates. . . . It is true that it is the officers of the affiliates who call the strikes, but it is the officers of the national or parent organizations who shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political purpose."

terests of the locals with the policies and programs of the federation, for the regional director is the "C.I.O.'s link with local unions."

In view of the foregoing, the claim of the Respondent that Regional Director Taylor "is charged with administrative and executive duties and powers over Local 20 of the Brewery Workers Union, the charging union in this action" (R. 388a-389a), is not "preposterous" as the C.I.O. suggests (*Amicus* brief, p. 14). It is clearly not beyond the realm of possibility, as the C.I.O. seems to imply, that it could be shown that Regional Director Taylor exercises "a working control over every C.I.O. local union and affiliated national union which operates in the Commonwealth of Kentucky and the C.I.O. region" (R. 541a). Respondent, therefore, respectfully submits that the C.I.O.'s insinuation that the respondent really could not, if given the opportunity, prove anything impressive concerning Regional Director Taylor's duties and functions with respect to the C.I.O. locals and international unions operating within Kentucky should not be seriously regarded by this Court.[8]

[8] The C.I.O. urges that it is not certain whether Respondent has been arguing that Regional Director Taylor was an officer of the C.I.O. itself or of the charging local union (*Amicus* brief, p. 14). Respondent has intended to assert that Regional Director Taylor was an officer of the C.I.O. The Respondent sought to show the duties and powers which Taylor exercised over the charging Local 20 of The Brewery Workers as particular evidence that Taylor's post with the C.I.O. reached official stature. The Trial Examiner and the Board plainly understood Respondent's position. The Trial Examiner's report states:

"Respondent offered to show the functions performed by the said Taylor on behalf of the C.I.O. as bearing upon the ques-

(Footnote continued on following page)

III. The C.I.O.'s Argument That the Consequences of a Decision in Favor of the Respondent Are Such That This Court Should Not Affirm the Judgment of the Court of Appeals Is Unimpressive.

The C.I.O. first contends that the possibility of inadvertent compliance by a union with Section 9(h) should induce this Court to rule that an employer should not be able to raise the question of non-compliance in unfair labor practice cases or representation proceedings (*Amicus* brief, p. 16). The suggestion, therefore, is that the Court should prohibit inquiry into the compliance of a union with Section 9(h) because of the chance that a union may not have complied with the law. To state such a proposition is to refute it. It cannot seriously be supposed that Congress intended that this Court should put a premium on carelessness on the part of the union in not fulfilling its obligation under the law. Yet this is substantially what the C.I.O. asks this Court to do. Furthermore, if it is held that parties to an unfair labor case proceeding shall not be permitted to raise the issue of

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tion of whether he was in fact or effect an officer of the C.I.O. within the purview of said subsection (h)" (R. 517a).

The Board observed in its Decision and Order:

". . . . [T]he Respondent contended that W. B. Taylor, the C.I.O. Regional Director in Louisville, Kentucky, exercised administrative and executive duties and powers over Local 20 of the Brewery Workers; that Taylor was in fact an officer of the C.I.O. although not listed as such in its Constitution and bylaws; and accordingly, that Taylor was required under Section 9(h) to file a non-Communist affidavit, which he had not done" (R. 527a).

Nor does the Board now assert that there was any confusion about Respondent's position (see Petitioner's brief, pp. 4, 5).

compliance, careless non-compliance with Section 9(h) may grow into intentional non-compliance.

The C.I.O. also urges that this Court should not hold that Regional Director Taylor was an officer of the C.I.O., because the result would be that many unfair labor practice cases and many representation certifications would be voided as a result of such holding (*Amicus* brief, pp. 17-19). These results may flow from a decision in favor of the Respondent; but it does not follow, as the C.I.O. implies, that the Court should let its decision as to the proper interpretation of Section 9(h) be influenced by such considerations. If this Court believes that the Board under its "constitutional" test fails to do the task which Congress intended that it should do (as Respondent contends), it should strike down this test. This Court in the *Highland Park* case did not hesitate to overturn the Board's ruling that Section 9(h) did not apply to the C.I.O., even though many unfair labor practice charges were thrown out and many representation certifications were necesarily voided (*Amicus* brief, p. 17); and we submit that there is no reason why this Court should now allow such considerations in any wise to affect the decision in this case.

CONCLUSION.

Respondent submits this brief in order to clarify and correct certain misconceptions regarding the issues raised in this case which may have been engendered by the brief of the American Federation of Labor and Congress of Industrial Organizations.

Respectfully submitted,

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